

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MILK STUDIOS, LLC,

X CIVIL ACTION NO.:

Plaintiff,

V.

SAMSUNG ELECTRONICS CO., LTD.;
SAMSUNG ELECTRONICS AMERICA, INC.,
and SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC,

X

Defendants.

**DECLARATION OF MAZDACK RASSI IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN EXPEDITED TRIAL**

MAZDACK RASSI hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the co-founder of plaintiff Milk Studios, LLC (“Milk”) and, since 1998, have served as Milk’s Creative Director. I submit this Declaration in support of Milk’s Application for an Expedited Trial, and the facts set forth in this Declaration are based on my personal knowledge and/or my review of Milk’s files.

2. As Creative Director, I have overall responsibility for the day-to-day operation of Milk and all of its businesses, as well as the strategic decisions of the company. As part of my responsibilities, I am very familiar with the relationships Milk has cultivated with its clients, collaborators and partners. I frequently meet with Milk's clients, collaborators and partners to discuss ongoing projects, ensure that client expectations are being met and explore future business opportunities for Milk.

THE BIRTH OF MILK

3. Milk is a creative, content and multimedia company that serves as a contemporary culture think tank for innovation, promotion and collaboration with some of today's most talented artists, musicians, celebrities, designers, fashion icons, and producers.

4. In 1996, I met my now partners Moishe Mana and Erez Shternlicht, who I later learned purchased the former Nabisco building located at 450 W. 15th Street in Manhattan's Meatpacking District (that is now Milk's New York headquarters). I suggested creating a high end photography studio, as I already had several friends in the industry at the time. After submitting a business plan about my vision for the space, I convinced Mr. Mana and Mr. Shternlicht to create a photography studio and allow me to handle the day to day operations.

5. I conceived of the name MILK for the business. I was drawn to the name MILK because of the architectural quality of the word and the letters M-I-L-K, as well as its uniqueness in the context of Milk's business.

6. Milk launched in 1998 as a premiere photography studio attracting preeminent photographers, fashion designers, celebrities, artists, musicians and brands for editorial and commercial photo shoots and events. A few years later, Milk expanded its services opening its photo gallery, where it exhibits works by cutting edge artists and also hosts events.

7. Milk has grown from the start, and in addition to providing studio and gallery services, Milk has expanded its services to include an online platform featuring music and video streaming, music and fashion video production, digital content production, post-production editing and similar services for all forms of digital media, advertising, film equipment rental. Milk also hosts promotional events at all of its locations, and some off-site locations, for its music, photography, fashion, corporate and individual clients. Milk is thus intimately involved

with all aspects of the creative process, from conception to performance to post-production activities.

8. Milk consistently features the MILK mark as the banner under which all of its businesses and services operate, including Milk's website, marketing campaigns and materials, and on the flag that hangs outside of our Manhattan offices. Some of Milk's businesses are called Milk Studios, Milk Gallery, Milk Made, Milk Agency and Milk Digital.

9. As a result of our growth, Milk opened a 45,000 square foot facility in Los Angeles, California in 2009, and a 6,000 square foot Brooklyn, New York facility in 2013.

MILK'S MUSIC AND VIDEO SERVICES

10. As Milk's reputation grew, so did the convergence of photography, art, fashion, media, music and creativity under its roof. As a result, music and videos pervade Milk's businesses and the services that it offers to its clients, collaborators and the public at large. For example, Milk is often hired for photo shoots by major fashion houses or apparel brands, coinciding with their marketing and advertising campaigns, and during which Milk will often create supplementary video, music and photographic content to be used in various media in connection with those campaigns.

11. For musicians, in particular, Milk can and does provide a wide array of services, including a place to play music, create and fine-tune new music and music videos, launch new albums, announce tours and projects and connect with fans through both live and recorded performances, as well as through social media and online platforms where their music and other videos can be and are streamed digitally.

12. In 2006, Milk opened the MILK Jam Room, which is a unique recording, rehearsal, performance and event space. The MILK Jam Room has hosted performances and by

the Kills, Patti Smith, Theophilus London and Icona Pop, among others. Audio and video content from MILK Jam Room performances as well as interviews with the performers are routinely streamed or otherwise made available on Milk's digital platform. Milk has also hosted live music performances in its other spaces (other than in the MILK Jam Room), including by Aretha Franklin, Cyndi Lauper and Mark Ronson. Photographs of the MILK Jam Room are attached as **Exhibit A**. Examples of press coverage of events and performances taking place in the MILK Jam Room and at Milk Studios are attached as **Exhibit B**.

13. In 2007, Milk partnered with CAMI, a division of Columbia Artists Management, Universal Music Classics Group, and Align Entertainment to create MILK Salon, a series of intimate classical music concerts held at Milk Studios. Milk, recognizing the lack of classical music performances in downtown New York City, sought to introduce classical music to a new generation. Well-known classical musicians, including Lang Lang, performed at these performances. Milk's MILK Salon events were widely covered by the press, including *The New York Times*. Copies of representative exemplars of the press that MILK Salon events received is attached as **Exhibit C**.

14. In 2010, Milk launched a digital editorial platform, MILK MADE (using the domain name www.milkmade.com), through which Milk showcases innovative talent in fashion, music, photography, art and film. Since 2011, Milk has regularly streamed music and videos to the public on the MILK MADE digital platform.

15. Milk also regularly hosts listening sessions for both established and up-and-coming artists across a variety of genres. For example, in 2013, Milk hosted the listening party for the release of Kanye West's critically acclaimed "Yeezuz" album. The event was attended by such musicians and celebrities as Jay-Z, Beyoncé and Timbaland, among others.

16. Milk likewise regularly hosts art exhibits in its MILK GALLERY that often feature music and videos. Four examples come to mind. In 2007, MILK GALLERY hosted an exhibit celebrating the release of the book “Tom Petty and the Heartbreakers Runnin’ Down a Dream.” In 2009, MILK GALLERY held an exhibit of photographs detailing the history of the musical group THE POLICE, which led to a musical performance in the MILK Jam Room. In 2011, MILK GALLERY hosted an exhibit of photographs of musicians, which included a performance by Patti Smith and R.E.M.’s Michael Stipe (both of whom were featured in the exhibit). In 2013, MILK GALLERY, partnering with Boo Hooray, displayed hundreds of examples of homemade album cover-art by musicians from the 1970s’ and 1980s’ North American, British and Australian punk scene, as well as from the world of Jamaican Dub, Ska and Rocksteady. Examples of the press Milk received for these and other events are attached as **Exhibit D.**

17. Milk also promotes music festivals catered toward trendsetters such as the Global Citizens Festival in New York City, during which musicians such as Jay-Z, Beyoncé, Tiesto, Fun., No Doubt and The Roots performed. Milk launched the Global Citizens Festival at an event in the MILK Jam Room and the MILK GALLERY. Examples of the press that Milk received for its promotion of the Global Citizens Festival in New York City are attached as **Exhibit E.**

THE GROWTH OF THE MILK BRAND

18. Milk strategically markets, advertises and promotes the Milk brand in the United States and throughout the world using word of mouth, unsolicited advertising and editorial in such publications as *New York Magazine*, *Spin*, *Rolling Stone*, *The New York Times* and others, internet communications, a robust social media presence, hosting live events, and experiential public relations events.

19. Milk's MILK MADE digital platform has been viewed more than 5.5 million times by approximately 1.8 million visitors since April 2011. See **Exhibit F**.

20. Milk also partners with third party social networking sites such as Tumblr (<http://mlk.md/MilkTumblr>), where Milk is ranked in the top ten fashion pages, Twitter (<https://twitter.com/MilkStudios>), Facebook (<https://www.facebook.com/MilkMadeNY/posts>), Google+ (<https://plus.google.com/+MilkmadeNY/posts>), Instagram (<http://instagram.com/milkstudios/>), SoundCloud (<https://soundcloud.com/milkmade>), Pinterest (<http://www.pinterest.com/milkmade>), Vimeo (<http://mlk.md/MilkVimeo>) and MySpace (<https://myspace.com/milkmade>) to promote our services.

21. Through our online presence, Milk achieved over 1 billion impressions on digital media we have produced on both online and mobile applications. Our internet and social media presence prominently displays the MILK brand. Copies of a representative sampling of Milk's website and social media pages are attached as **Exhibit G**.

22. Another focus of Milk's marketing strategy is developing relationships with industry influencers, *i.e.*, celebrities in their own fields and who enjoy a significant public following. Through these influencers, Milk reaches the larger community of those involved in the fashion, beauty, music, art and film industries, and their fans or followers.

23. For example, on October 30, 2014, Milk Studios in Los Angeles hosted the "amFAR Inspiration Gala," which honored fashion designer and film director, Tom Ford. The event was attended by numerous celebrities and featured musical performances by Diana Ross and Chris Martin. Mr. Ford, recognizing Milk's reputation, has chosen to show his Fall 2015 collection at Milk in Los Angeles. Examples of the press that Milk received for the amFAR Inspiration Gala are attached as **Exhibit H**.

24. Seeking to capitalize on Milk's reputation and associations with industry influencers, corporate clients such as Ford Motor Company, Absolut Vodka, Red Bull, Smartwater, Lexus, Intel Corporation and Samsung hire Milk to produce and present promotional events at Milk and at various locations around the world.

25. For example, Intel Corporation chose Milk to host the Creators Project, a day-long event that Intel and VICE sponsored and featured musical performances by M.I.A., Sleigh Bells, Die Antwoord and Interpol. Intel again recently partnered with Milk in 2014 to launch MUZSE, a multi-workshop initiative involving designers from different creative disciplines who aim to present ideas that connect technology to culture. A representative sampling of the press that Milk received for its collaborations with Intel Corporation are attached as Exhibit I.

**THE UNITED PATENT AND TRADEMARK OFFICE
RECOGNIZES THAT MILK'S MILK MARKS ARE DISTINCTIVE**

26. Milk's rights in its MILK marks are recognized by the United States Patent and Trademark Office ("USPTO"). Milk owns the following federally registered marks: MILK (Registration No. 3,312,318), MILK MADE (Registration No. 4,446,712), MILK GALLERY (Registration No. 4,620,902), MILK EQUIPMENT RENTAL (Registration No. 3,236,886) and MILK STUDIOS (Registration No. 3,324,347). Milk has also applied to register the mark MILK GALLERY with the USPTO (Application Serial No. 86/346,828), and that application is pending. Milk's federal trademark registrations and pending application are collectively referred to as the "MILK Marks." Certified copies of the Certificates of Registration for the registered MILK Marks and the status report generated from the USPTO Trademark Status & Document Retrieval (TSDR) system for the pending MILK GALLERY application are attached as Exhibit J.

27. All of the MILK Marks are valid and in full force and effect. Therefore, according to the USPTO, Milk's MILK Marks identify Milk as the source of creative and information services bearing the MILK Marks and distinguish Milk's services under the MILK Marks from those provided by third parties.

SAMSUNG TAKES MILK'S NAME

28. As Milk's Creative Director, I keep abreast of trends and follow the activities of Milk's partners and collaborators.

29. Samsung is one of the world's largest electronics companies, and, I understand, the second largest smartphone seller in the United States behind Apple. In 2013, *Forbes* rated Samsung the ninth most valuable global brand, and in 2013, Samsung's brand value grew more than 30% faster than the most valuable brand, Apple. A copy of the *Forbes* article is attached as **Exhibit K**.

30. I learned in February 2014 that Samsung had filed three trademark applications with the USPTO to register variations of the term "Milk" in connection with a streaming entertainment service that could broadcast music and video, and provide consumers with access to an online database of digital content. I also learned that Samsung would soon be launching its rebranded music streaming service as "Milk."

31. Several weeks later, in March 2014, I learned that Samsung had launched its "Milk Music" streaming service, and a related mobile application, on Samsung Galaxy cell phones and tablets.

32. I was surprised that Samsung would take our name. Samsung is intimately familiar with Milk, the MILK brand and the services Milk provides under the MILK Marks, having engaged and/or collaborated and partnered with Milk on at least 18 projects since 2006. For example, Milk has created promotional materials for Samsung products, launched the

Samsung Infuse 4G mobile telephone at an event held at Milk's Los Angeles facilities on May 12, 2011, launched Samsung's new appliance offerings at the "Make Your House Work" exhibit held at Milk Gallery on June 18, 2012, partnered with *GROUND* magazine for an experiential event held at Milk Gallery, and held a multiday photo shoot at Milk Studios for *Vogue* magazine, among others. A representative sampling of the press Milk received for the Samsung events is attached as **Exhibit L**.

33. Samsung also follows Milk's projects and events with Milk's other corporate partners. In December 2014, Samsung retweeted congratulations on the opening of an exhibit as part of the MUZSE project, a collaboration with Milk and Intel to fuse culture and technology. The tweet read: "Got all our friends cc @intel #Muzse" and embedded a link to a photo of me and others at the opening event at Milk. A copy of Samsung's tweet is attached as **Exhibit M**.

34. I have also personally met with executives at Samsung at Milk or have been approached by Samsung or agencies working on its behalf to explore possible collaborations and partnerships. I am also aware that others at Milk, including Lindsay Holmes, have met and communicated with Samsung employees about potential collaborations with Milk events, including Milk's Made Fashion Week.

35. Upon learning of Samsung's intent to use the word "milk" with its streaming services, Milk directed its counsel to explore a resolution with Samsung that would protect Milk's valuable intellectual property rights and, hopefully, avoid litigation. Over the course of the next few months, Samsung, through its counsel, repeatedly requested additional time to consider a proposal to address Milk's concerns. As late as July 25, 2014, Samsung's counsel advised our counsel that Samsung was "discussing internally a settlement proposal" and was not "ignoring the situation." On August 22, 2014, however, Samsung's counsel informed us that

Samsung was not interested in reaching a business solution and terminated negotiations. Copies of correspondence between counsel for Milk and counsel for Samsung are attached as **Exhibit N**.

36. However, during that time, Samsung rolled out a multimedia marketing strategy for its “Milk” music services. For example, Samsung advertised its “Milk” streaming services in national television commercials airing prime time featuring Russell Simmons, at pop-up stores in malls, online and in stores selling Samsung Galaxy devices. As recently as January 4, 2015, Samsung placed a flyer in the Sunday *New York Times* promoting its “Milk” music and video streaming services. Copies of representative exemplars of Samsung’s promotional materials for its “Milk” music and video services are attached as **Exhibit O**.

37. Samsung also expanded its offerings under the “Milk” name. I learned that Samsung introduced a second, premium tier it calls “Milk Music Premium,” which is a subscription service.

38. I believe that Samsung’s provision and sale of music and video streaming services under the name “Milk” will irreparably harm Milk.

39. Samsung can take unfair advantage of the ready-made goodwill in the MILK Marks that Milk has spent the last 15 years building. Also, Samsung’s use of “Milk” on its music and video streaming services and related mobile applications has impaired Milk’s ability to control its reputation and the quality of services Milk provides under the MILK Marks.

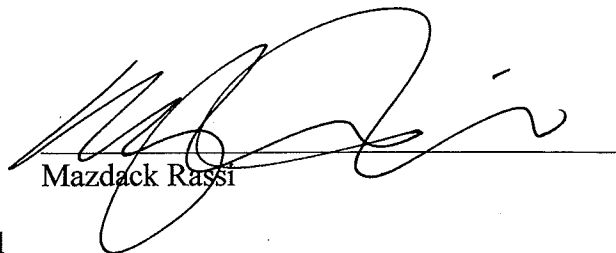
40. Samsung is also significantly larger than Milk. As a result, Samsung is well able to outspend Milk in advertising and marketing. In fact, I have learned that Samsung spends billions worldwide to advertise its products and, in 2012, Samsung spent \$597 million dollars to advertise its smartphone offerings in the United States. See **Exhibit P**. Samsung’s actions will destroy the valuable brand equity Milk has built in its MILK brand over the past 15 years.

41. Samsung has also announced that this Summer it is opening a Samsung store at 837 Washington Street, around the corner from Milk's New York City headquarters. Samsung has posted a large "Milk" sign in the store window touting the opening of its new store. Copies of photographs of Samsung's marketing materials featuring the "Milk" name, covering the window of the 837 Washington Street store, are attached as Exhibit Q.

42. I also understand that Samsung has expanded its services under the "Milk" name. On November 19, 2014, I learned that Samsung would be introducing a "Milk" video streaming service to Samsung Galaxy customers. See Exhibit R. Samsung's "Milk" video service is a video streaming service that provides Galaxy owners with curated videos from Vice, Venmo, Vevo, Funny or Die and Red Bull. Users can follow their friends and brands. See Exhibit S. It is my understanding that Samsung has launched its "Milk" video streaming services.

43. I also believe Samsung's actions are likely to cause, and, in fact, have caused consumer confusion with the Milk brand. Samsung device owners are able to access both Samsung's "Milk" music and video streaming services and Milk's MILK MADE website and social media pages on their devices. Also, since Samsung announced the launch of its "Milk" music and video streaming services, Milk's current and potential business partners have contacted Milk to inquire about its partnership with Samsung. Copies of communications from Milk's business partners are attached as Exhibit T. Thus, Samsung's actions will reduce the ability of the MILK Marks to inform consumers that music and video streaming services bearing the MILK Marks originate from Milk.

I declare under penalty of perjury that the following is true and correct. Executed in New York, New York on January 5, 2015.


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